

OF

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MM Docket No. 91-10

RECEIVED

NOV - 8 1991

Federal Communications Commission
Office of the Secretary

November 8, 1991

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of

WHITE BROADCASTING PARTNERSHIP
et al.

) MM Docket No. 91-10
)
) File No. BPH-891214MM
)

For Construction Permit for a New FM Station
Station on Channel 289A in Baldwin, Florida

To: Hon. Edward Luton, Administrative Law Judge

RECEIVED

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Federal Communications Commission
Office of the Secretary

JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT

Peaches Broadcasting, Ltd. ("Peaches"), Charley Cecil White and Dianna White d/b/a White Broadcasting Partnership ("White"), Douglas Johnson ("Johnson"), JEM Broadcasting, Limited Partnership ("JEM") and Northeast Florida Broadcasting Corp. ("NEF") (hereinafter referred to jointly as the "Movants"), pursuant to Section 73.3525 of the Commission's Rules, hereby jointly request that the Presiding Judge approve each of the four settlement agreements attached hereto, dismiss the applications of White, Johnson, JEM and NEF, and grant Peaches' application. In support of these requests, the Movants respectfully state as follows.

1. The Movants are the only five remaining mutually exclusive applicants to serve Baldwin, Florida on Channel 289A. White, Johnson, JEM and NEF have each separately entered into settlement agreements with Peaches (Exhibits 1-4 hereto, respectively). The Agreements were each concluded on October 27, 1991. Pursuant to the agreements, the White, Johnson, JEM and NEF applications would be dismissed with prejudice in return for the consideration specified in each such agreement, and Peaches' application would be granted.

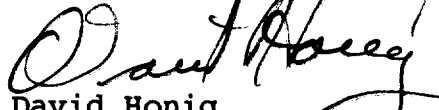
2. Each Agreement includes a declaration from each of the parties thereto ("Declaration of Consideration") meeting the requirements of §73.3525 as modified in Settlement Agreements, 6 FCC Rcd 85 (1990), recon denied, 6 FCC Rcd 2901 (1991). The White, Johnson, JEM and NEF Declarations of Consideration fully document the respective applicants' prosecution expenses and show that the proposed consideration to be paid to each of White, Johnson, JEM and NEF does not exceed those applicants' respective prosecution expenses.

3. Granting this request would serve the public interest by eliminating the need for further comparative proceedings, thereby conserving Commission resources and facilitating the initiation of a first FM radio service to Baldwin, Florida.

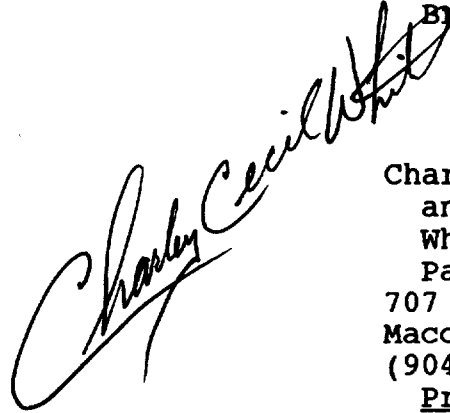
4. None of the Movants filed its application for the purpose of reaching or carrying out this or any other settlement. Statements under penalty of perjury by principals of the Movants attesting to this fact, and explaining why the Settlement Agreement is in the public interest, are set forth as part of each respective Declaration of Consideration.

For the foregoing reasons, the Movants respectfully request that this Joint Petition be granted, that the attached four settlement agreements be approved, that the applications of White, Johnson, JEM and NEF be dismissed with prejudice, and that the application of Peaches be granted.

Respectfully submitted,



David Honig
1800 N.W. 187th Street
Miami, Florida 33056
(305) 628-3600
Counsel for Peaches
Broadcasting, Ltd.

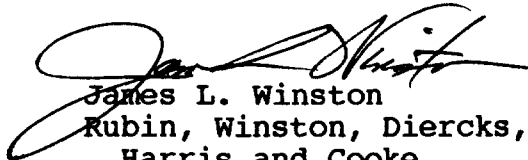


Charley Cecil White
and Dianna White d/b/a
White Broadcasting
Partnership
707 Newport Street
Macclenny, Florida 32063
(904) 259-4821
Pro Se



Arthur V. Belendiuk
Smithwick & Belendiuk
2033 M Street N.W.
Washington, D.C. 20036
(202) 785-2800
Counsel for Douglas Johnson

Avelino G. Halagao
7799 Leesburg Pike, Suite 900
Falls Church, Virginia 22043
(703) 847-6803
Counsel for JEM Productions,
Limited Partnership



James L. Winston
Rubin, Winston, Diercks,
Harris and Cooke
1730 M Street N.W. #412
Washington, D.C. 20036
(202) 861-0870
Counsel for Northeast Florida
Broadcasting Corp.


November 8, 1991

Respectfully submitted,

David Honig
1800 N.W. 187th Street
Miami, Florida 33056
(305) 628-3600
Counsel for Peaches
Broadcasting, Ltd.

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and Dianna White d/b/a
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1730 M Street N.W. #412
Washington, D.C. 20036
(202) 861-0870
Counsel for Northeast Florida
Broadcasting Corp.

November 8, 1991

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into this 27th day of October, 1991, by and between Peaches Broadcasting, Ltd. ("Peaches") and Charley Cecil White and Dianna White d/b/a White Broadcasting Partnership ("White").

W I T N E S S E T H:

WHEREAS, Peaches and White have pending before the Federal Communications Commission ("FCC") mutually exclusive applications for a construction permit to construct and operate a new FM radio station on Channel 289A in Baldwin, Florida; and

WHEREAS Peaches and White believe that it would serve the public interest to avoid the need for additional costly and protracted litigation, to conserve the resources of the FCC, and expedite the inauguration of the first FM radio service to be licensed to Baldwin, Florida; and

WHEREAS, prior FCC approval is required to give effect to this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth, the parties, intending to be legally bound, do hereby agree and contract as follows.

1. Dismissal of Application. White shall request the dismissal with prejudice of its application (File No. BPH-891214MM) for a construction permit for Channel 289A, Baldwin, Florida, and pursuant to a grant of that request, shall dismiss its application.

2. Consideration. In exchange for the dismissal of White's application, and subject to the terms and conditions specified herein, Peaches shall pay to Charles and Dianna White the sum of Twenty-Four Thousand and Five Hundred Dollars (\$24,500.00).

3. Payment. Payment of the Twenty-Four Thousand Five Huindred Dollars (\$24,500.00) from Peaches as described in paragraph 2 above shall be made within five days following the date on which an Order or Orders granting Peaches' application, approving this Settlement Agreement, and approving settlement agreements between Peaches and Douglas Johnson, JEM Productions, Limited Partnership, and Northeast Florida Broadcasting Corp. respectively, shall become a Final Order or Final Orders. Peaches and White agree that an Order becomes a Final Order forty days following its release date, absent the filing of a request for reconsideration or review, and absent reconsideration or review on the FCC's own motion. To secure payment to White under this Agreement, Peaches shall cause to be deposited the sum of Twenty-Four Thousand and Five Hundred Dollars (\$24,500.00) ("Escrow Funds") into the David Honig, Esq. and James Winston, Esq., Baldwin, Florida Escrow Account ("Escrow Account"). The escrow agents shall be David E. Honig and James L. Winston ("Escrow Agents"). The Escrow Agents shall notify White by telephone that the Escrow Funds have been placed in the Escrow Account no later than Noon Eastern Time on November 1, 1991, and shall thereupon provide White with a facsimile copy of the deposit slip reflecting the placement of the Escrow Funds in the Escrow Account. In the event that the Escrow Funds are not timely deposited, White, after giving written notice to Peaches, may terminate this Agreement. Any interest accruing on the Escrow Funds shall be payable and distributed to Peaches at such times as Peaches may request the same of the Escrow Agents in writing. Within five days following the date on which an Order or Orders granting Peaches' application, approving this Settlement Agreement, and

approving settlement agreements between Peaches and Douglas Johnson, JEM Productions, Limited Partnership, and Northeast Florida Broadcasting Corp. respectively, shall become a Final Order or Final Orders, the Escrow Agents shall cause the Escrow Funds to be released and delivered to Charles and Dianna White. In the event that the conditions for payment specified in paragraph 5 of this Agreement are not met, the Escrow Agents shall, at Peaches' option, cause the Escrow Funds to be released and delivered to Peaches. Likewise, in the event that the FCC issues an order disapproving this Agreement and the parties do not submit within thirty (30) days thereof a revised Settlement Agreement to the FCC for approval in accordance with the provisions of paragraph 4, infra, of this Agreement, the Escrow Agents shall cause the Escrow Funds to be released and delivered to Peaches.

4. FCC Approval. The provisions of this Agreement are subject to the approval of the FCC. The parties agree to file with the FCC a joint request for approval of this Agreement and other supporting documents, in proper form, required by Section 73.3525 of the FCC's rules or other rules or policies which may be applicable. Said request shall be filed no later than November 1, 1991. Should any supporting documentation not be ready for filing at that time, such documentation shall promptly be filed by the party or parties involved as a supplement to the joint request. The parties also agree to promptly take such other and further actions as may reasonably be required to carry out the purpose, terms and conditions of this Agreement. The parties agree that should the FCC issue an order disapproving this Agreement, the parties shall in good faith make individual and joint efforts to

resolve all objections in order to resubmit this Agreement for approval within thirty (30) days of the issuance of said order. In addition to the other covenants set forth in this Agreement, Peaches and White each hereby agree that they shall take no action, either individually or in conjunction with any other party, of any kind that is inconsistent with or that in any way hinders, obstructs or delays the approval of this Agreement.

5. Conditions Precedent. This Agreement and the rights and obligations of both parties hereunder are subject to and contingent upon the issuance by the FCC of an Order or Orders granting Peaches' application, approving this Settlement Agreement, and approving settlement agreements between Peaches and Douglas Johnson, JEM Productions, Limited Partnership, and Northeast Florida Broadcasting Corp. respectively, which Order or Orders shall have become a Final Order or Final Orders (as described in ¶3 herein) by May 1, 1992. Should this condition not be fulfilled, and should the parties not agree in a signed writing to extend that date, this Agreement shall terminate and the parties shall return to the status quo ante.

6. Declarations. Appended to this Settlement Agreement as Exhibits 1 and 2 respectively are the declarations under penalty of perjury of principals of Peaches and White in compliance with 47 CFR §73.3525 of the FCC's Rules relating to consideration in exchange for dismissal of an application.

7. Indemnity. Peaches and White each individually agree to indemnify and hold the Escrow Agents harmless against any loss, claim, damage, liability, or expense incurred in connection with any action, suit, proceeding, claim or alleged liability arising

from the performance of their duties as Escrow Agents, provided, however, that the Escrow Agents shall not be indemnified or held harmless for their gross negligence or willful misconduct.

8. Duties of Escrow Agents. The duties and responsibilities of the Escrow Agents shall be limited to those expressly set forth in paragraph 3 herein.

9. Notices. All notices, requests, statements or other communications to be given hereunder to any party shall be in writing and shall be deemed to have been duly given if hand delivered or sent by registered mail, return receipt requested, to the parties as follows:

a. If to Peaches, to:

Fred and Anna Matthews
9130 11th Avenue
Jacksonville, Florida 32208

with a copy to:

David E. Honig, Esq.
1800 N.W. 187th Street
Miami, Florida 33056

b. If to White, to:

Charley and Dianna White
707 Newport Street
Macclenny, Florida 32063

c. If to the Escrow Agents, to:

David E. Honig, Esq.
1800 N.W. 187th Street
Miami, Florida 33056

and

James L. Winston, Esq.
Rubin, Winston, Diercks, Harris and Cooke
1730 M Street N.W.
Washington, D.C. 20036.

10. Integration. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and may not be changed, amended, extended, terminated, waived or discharged except by an instrument in writing signed by the parties hereto.

11. Expenses. Each party shall bear its own expenses for the preparation of this Agreement and for the performance of its obligations hereunder.

12. Headings. The headings of the provisions of this Agreement have been included for convenience only and no such heading shall in any way alter the meaning of any such provision.

13. Severability. The provisions of this Agreement are severable, and if any provision or portion thereof is declared invalid or unenforceable, all remaining provisions shall remain unaffected and shall be legally binding and enforceable.


14. Binding Effect. Each party represents that it has full legal authority to enter into, to execute, and to perform its obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties, their heirs, successors and assigns.

15. Governing Law. This Agreement shall be construed under the laws of Florida, subject, however, to all applicable rules and regulations of the FCC.

16. Counterparts and Facsimile Copies. This Agreement may be executed by the parties in counterparts with the same force and effect as if the signatures to all counterpart pages were made upon the same copy of this Agreement. Facsimile signatures of this Agreement shall be legally binding.

IN WITNESS WHEREOF, the parties have duly executed this
Settlement Agreement on the date first written above.

PEACHES BROADCASTING, LTD.


By: Frederick Matthews
President
Peaches Productions
Group, Inc.,
General Partner

CHARLEY CECIL WHITE AND
DIANNA WHITE d/b/a WHITE
BROADCASTING PARTNERSHIP

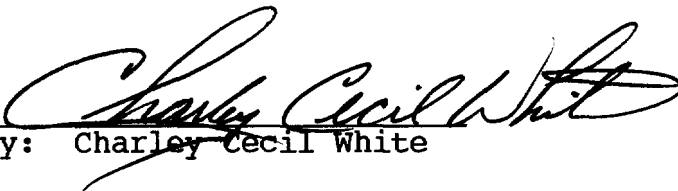
By: Charley Cecil White

IN WITNESS WHEREOF, the parties have duly executed this
Settlement Agreement on the date first written above.

PEACHES BROADCASTING, LTD.

By: Frederick Matthews
President
Peaches Productions
Group, Inc.,
General Partner

CHARLEY CECIL WHITE AND
DIANNA WHITE d/b/a WHITE
BROADCASTING PARTNERSHIP


By: Charley Cecil White

DECLARATION OF CONSIDERATION

I, Frederick Matthews, President of Peaches Productions Group, Inc., the General Partner of Peaches Broadcasting, Ltd. ("Peaches") hereby certify that neither I nor anyone else representing Peaches has paid or promised to pay money or other thing of value in connection with the proposed dismissal of the application of Charley Cecil White and Dianna White d/b/a White Broadcasting Partnership ("White") (File No. BPH-891214MM) or the grant of Peaches' application (File No. BPH-891214MN), with the exception of the proposed reimbursement of \$24,500 of White's legitimate and prudent legal fees and expenses as set out in a declaration separately submitted by Charley Cecil White.

There are no oral agreements between White and Peaches.

Peaches considers the foregoing Settlement Agreement to be in the public interest because the settlement proposed therein will avoid the need for additional costly and protracted litigation, will conserve the resources of the FCC, and will expedite the inauguration of the first FM radio service to be licensed to Baldwin, Florida.

Peaches did not file its application for a construction permit for Channel 289A in Baldwin, Florida for the purpose of reaching or carrying out this Settlement Agreement or any other settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

 27 Oct 91
Frederick Matthews

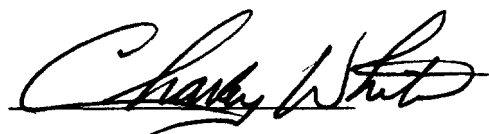
DECLARATION OF CONSIDERATION

I, Charley White, the General Partner of White Broadcasting Partnership ("White") hereby certify that neither I nor anyone else representing White has been paid or has been promised any payment or other thing of value in connection with the proposed dismissal of White's application (File No. BPH-891214MM) or the grant of Peaches Broadcasting Ltd's. (Peaches) application (File No. BPH-891214MN), with the exception of the proposed reimbursement of \$24,500 of White's legitimate and prudent legal fees and expenses as set out in the attached Exhibits A-F.

White believes this Settlement Agreement to be in the public interest because it will expedite the first FM radio service to be licensed to Baldwin, Florida thus giving the citizens of Baldwin a voice separate from Jacksonville. The Settlement will also avoid the need for additional costly and long-term litigation and conserve the resources of the Federal Communications Commission.

White did not file its application for a construction permit for Channel 289A in Baldwin, Florida for the purpose of reaching or carrying out this or any other Settlement Agreement.

I declare under Penalty of Perjury under the laws of the United States of America that the foregoing statement is true and correct.



Charley White
General Partner
White Broadcasting Partnership

10-26-91
Date

DECLARATION OF CHARLEY WHITE

I, Charley White, certify that the following "Summary of Expenses" as supported by the attached documentation, accurately represents the prosecution expenses of White Broadcasting Partnership in the Baldwin, Florida FM proceeding.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my belief and knowledge.

10-26-91

Date


Charley White

WHITE BROADCASTING PARTNERSHIP

EXHIBIT A

WHITE BROADCASTING PARTNERSHIP
EXHIBIT A

SUMMARY of EXPENSES

Legal fees (Exhibit B p. 1-26).....	26,149.56
Engineering fees (Exhibit C p. 1-3).....	2,688.17
FCC application fee (Exhibit D).....	1,800.00
FCC hearing fee (Exhibit E).....	6,760.00
Newspaper ads (Exhibit F p. 1 & 2).....	703.56
Total.....	\$38,101.29

WHITE BROADCASTING PARTNERSHIP

EXHIBIT B

McCABE & ALLEN
Accounts Receivable
P.O. Box 867
Baltimore, MD 21297-0237

Date: December 5, 1989
Terms: Net 30

Page 1

To: Mr. & Mrs. Charley White
707 Newport Street
MacClenny, FL 32063

Attention: Charley White

Account #: 15111

Previous Credit Balance:	\$0.00
Previously Billed:	\$0.00
Amount Received:	\$1,000.00
Overdue Balance:	\$0.00
Overdue 1.5% Charge:	\$0.00
Total Past Due Balance:	\$0.00
Services Rendered 10/26-11/25:	\$350.00
Out of Pocket Items:	
Photocopying:	\$1.80
Telephone:	\$1.13
Federal Express:	\$23.50
Postage:	\$0.25
Courier Delivery:	\$0.00
Travel:	\$0.00
Miscellaneous:	\$0.00
Total Out of Pocket Expenses:	\$26.68
CREDIT BALANCE:	(\$623.32)

PLEASE RETURN SECOND COPY WITH PAYMENT

McCABE & ALLEN
Accounts Receivable
P.O. Box 867
Baltimore, MD 21297-0237

Date: January 5, 1990
Terms: Net 30

Page 2

To: Mr. & Mrs. Charley White
707 Newport Street
MacClenny, FL 32063

Attention: Charley White

Account #: 15111

Previous Credit Balance:	\$623.32
Previously Billed:	\$0.00
Amount Received:	\$0.00
Overdue Balance:	\$0.00
Overdue 1.5% Charge:	\$0.00
Total Past Due Balance:	\$0.00
Services Rendered 11/26-12/25:	\$630.00
Out of Pocket Items:	
Photocopying:	\$17.55
Telephone:	\$2.75
Federal Express:	\$21.50
Postage:	\$1.85
Courier Delivery:	\$0.00
Travel:	\$0.00
Miscellaneous:	\$0.00
Total Out of Pocket Expenses:	\$43.65
BALANCE DUE:	\$50.33

PLEASE RETURN SECOND COPY WITH PAYMENT

McCABE & ALLEN
Accounts Receivable
P.O. Box 867
Baltimore, MD 21297-0237

Date: February 5, 1990
Terms: Net 30

Part 3

To: Mr. & Mrs. Charley White
707 Newport Street
MacClenny, FL 32063

Attention: Charley White

Account #: 15111

Previous Credit Balance:	\$0.00
Previously Billed:	\$50.33
Amount Received:	\$0.00
Overdue Balance:	\$50.33
Overdue 1.5% Charge:	\$0.75
Total Past Due Balance:	\$51.08
Services Rendered 12/26-1/25:	\$63.00
Out of Pocket Items:	
Photocopying:	\$0.60
Telephone:	\$1.22
Federal Express:	\$0.00
Postage:	\$0.25
Courier Delivery:	\$0.00
Travel:	\$0.00
Miscellaneous:	\$0.00
Total Out of Pocket Expenses:	\$2.07
 BALANCE DUE:	 \$116.15

PLEASE RETURN SECOND COPY WITH PAYMENT

McCABE & ALLEN
Accounts Receivable
P.O. Box 867
Baltimore, MD 21297-0237

Date: March 5, 1990
Terms: Net 30

Page 4

To: Mr. & Mrs. Charley White
707 Newport Street
MacClenny, FL 32063

Attention: Charley White

Account #: 15111

Previous Credit Balance:	\$0.00
Previously Billed:	\$116.15
Amount Received:	\$0.00
Overdue Balance:	\$116.15
Overdue 1.5% Charge:	\$1.74
Total Past Due Balance:	\$117.89
Services Rendered 1/26-2/25:	\$0.00
Out of Pocket Items:	
Photocopying:	\$0.00
Telephone:	\$0.59
Federal Express:	\$0.00
Postage:	\$0.00
Courier Delivery:	\$0.00
Travel:	\$0.00
Miscellaneous:	\$0.00
Total Out of Pocket Expenses:	\$0.59
 BALANCE DUE:	 \$118.48

PLEASE RETURN SECOND COPY WITH PAYMENT

MCCABE & ALLEN
Accounts Receivable
P.O. Box 867
Baltimore, MD 21297-0237

Date: April 5, 1990
Terms: Net 30

PM 5

To: Mr. & Mrs. Charley White
707 Newport Street
MacClenny, FL 32063

Attention: Charley White

Account #: 15111

Previous Credit Balance:	\$0.00
Previously Billed:	\$118.48
Amount Received:	\$0.00
Overdue Balance:	\$118.48
Overdue 1.5% Charge:	\$1.78
Total Past Due Balance:	\$120.26
Services Rendered 2/26-3/25:	\$42.00
Out of Pocket Items:	
Photocopying:	\$0.00
Telephone:	\$0.00
Federal Express:	\$0.00
Postage:	\$0.00
Courier Delivery:	\$0.00
Travel:	\$0.00
Miscellaneous:	\$0.00
Total Out of Pocket Expenses:	\$0.00
 BALANCE DUE:	 \$162.26

PLEASE RETURN SECOND COPY WITH PAYMENT

Mailed \$275.00 4/9/90 ck #3343